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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/593,105 | 05/06/2008 | Andrew Mark Shaw | MC1-8345 | 9355 |
| 26294 | 7590 | 06/03/2010 | EXAMINER | |
| TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 1300 EAST NINTH STREET, SUITE 1700 CLEVELAND, OH 44114 | | | PHAM, HOA Q | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2886 | |
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| | | | 06/03/2010 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/593,105 | SHAW, ANDREW MARK | |
| | Examiner | Art Unit | |
| | HOA Q. PHAM | 2886 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 42-76 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
 5) Claim(s) ____ is/are allowed.
 6) Claim(s) ____ is/are rejected.
 7) Claim(s) ____ is/are objected to.
 8) Claim(s) 42-76 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ . |

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 42-71, drawn to a cavity based optical sensor.

Group II, claim(s) 72-73, drawn to a method and device for refreshing an interface.

Group III, claim(s) 74-76, drawn to an optical charge/capacitance sensor.

2. The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The inventions listed as Groups I, II and III do not relate to a single inventive concept under PCT Rule 13.1 because under PCT rule 13.2 (Circumstances in Which the Requirement of Unity of Invention Is to Be Considered Fulfilled), they lack the same or corresponding special technical features within the meaning of PCT Rule 13.2, second sentence. PCT Rule 13.2, second sentence states that Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, make over the prior art.

The special technical features of Group I are “an optical cavity formed by a pair of highly reflective surfaces such that light within said cavity makes a plurality of passes between said surfaces, an optical path between said surfaces including a reflection from a totally internally reflecting (TIR) surface, said reflection from said TIR surface generating an evanescent wave to provide a sensing function”; “a light source to inject light into said cavity”; “a detector to detect a light level within said cavity”; “a fiber optic cable having a core configured to guide light down the fiber surrounded by an outer cladding of lower refractive index than the core” “a sensing portion of the fiber optic cable is configured have a reduced thickness cladding provided with a functionalizing material which has a selective response to a target such that an evanescent wave from said guided light interacts with said material and is modified by the presence of said target”.

The special technical features of Group II are “a sensing device including an interface to which is attached a material which has a selective response to a target, wherein said interface is an optical interface, such that an evanescent wave at said interface is modified by said target, and wherein said interface is further provided with a photoelectron generator to assist in refreshing said interface” and “a method of refreshing an interface to which is attached a material which has a selective response to a target, the method comprising: providing said interface with a photoelectron generator; and illuminating said photoelectron generator to release electrons to refresh said interface”.

The special technical features of Group II are "an optical charge/capacitance sensor for providing an optical signal responsive to charge and/or capacitance at an optical interface, said sensor comprising a light input and a light output and being configured to provide an optical path between said light input and said light output"; "optical path including a totally internally reflecting (TIR) optical interface for attenuated TIR-based sensing" and "TIR interface being treated such that a change in charge and/or capacitance at said interface causes a change in absorbance of light traveling between said light input and said light output".

In summary, the details of each of the inventions constitute special technical features are mutually exclusive from one another. The invention of Group I does not share the special technical features of the inventions II and II, and vice versa.

If group I is elected. Following restriction is applied:

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

a) claims 42-55 and 66-71 (figure 1c); b) claims 56-65 (figure 4a).

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise require all the limitations of an allowed generic claim. Currently, the following claim(s) are generic: none.

The claims are deemed to correspond to the species listed above in the following manner:

Claims 42-55 and 66-71 discloses an optical cavity formed by a pair of highly reflective surfaces such that light within said cavity makes a plurality of passes between said surfaces, an optical path between said surfaces including a reflection from a totally internally reflecting (TIR) surface, said reflection from said TIR surface generating an evanescent wave to provide a sensing function; a light source to inject light into said cavity; and a detector to detect a light level within said cavity; and wherein said TIR surface is provided with a functionalizing material over at least part of said TIR surface such that said evanescent wave interacts with said material; whereby an interaction between said functionalizing material and a target to be sensed is detectable as a change in absorption of said evanescent wave.

Claims 56-65 discloses a sensor for a cavity of an evanescent-wave optical sensing device, the sensor comprising a fiber optic cable having a core configured to guide light down the fiber surrounded by an outer cladding of lower refractive index than the core, wherein a sensing portion of the fiber optic cable is configured have a reduced thickness cladding provided with a functionalizing material which has a selective

response to a target such that an evanescent wave from said guided light interacts with said material and is modified by the presence of said target.

The following claim(s) are generic: none.

4. REQUIREMENT FOR UNITY OF INVENTION

As provided in 37 CFR 1.475(a), a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (“requirement of unity of invention”). Where a group of inventions is claimed in a national stage application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression “special technical features” shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim. See 37 CFR 1.475(e).

WHEN CLAIMS ARE DIRECTED TO MULTIPLE CATEGORIES OF INVENTIONS

As provided in 37 CFR 1.475(b), a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) A product and process of use of said product; or
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

Otherwise, unity of invention might not be present. See 37 CFR 1.475(c).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention or species.

Should applicant traverse on the ground that the inventions have unity of invention (37 CFR 1.475(a)), applicant must provide reasons in support thereof. Applicant may submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. Where such evidence or admission is provided by applicant, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HOA Q. PHAM whose telephone number is (571)272-2426. The examiner can normally be reached on Monday through Friday, 7:00 AM TO 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifur Chowdhury can be reached on (571) 272-2287. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hoa Q. Pham/
Primary Examiner
Art Unit 2886

HP
May 31, 2010